STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE SECOND GROUP OF PARTS

PART 6

BANKRUPTCY

CHAPTER 7

CREDITORS' MEETINGS

First meeting of creditors

6.79.—(1) If under section 293(1) the official receiver decides to summon a meeting of creditors, he shall fix a venue for the meeting; not more than 4 months from the date of the bankruptcy order.

(2) When a venue has been fixed, notice of the meeting shall be given—

(a) to the court, and

(b) to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.

(3) Notice to the court shall be given forthwith; and the notice to creditors shall be given at least 21 days before the date fixed for the meeting.

(4) The notice to creditors shall specify a time and date, not more than 4 days before the date fixed for the meeting, by which they must lodge proofs and (if applicable) proxies, in order to be entitled to vote at the meeting.

(5) Notice of the meeting shall also be given by public advertisement.

(6) Where the official receiver receives a request by a creditor under section 294 for a meeting of creditors to be summoned, and it appears to him that the request is properly made in accordance with the Act, he shall—

(a) withdraw any notice already given by him under section 293(2) (that he has decided not to summon such a meeting), and

(b) fix the venue of the meeting for not more than 3 months from his receipt of the creditor's request, and

(c) act in accordance with paragraphs (2) to (5) above, as if he had decided under section 293(1) to summon the meeting.

(7) A meeting summoned by the official receiver under section 293 or 294 is known as "the first meeting of creditors".

Business at first meeting

6.80.—(1) At the first meeting of creditors, no resolutions shall be taken other than the following—

(a) a resolution to appoint a named insolvency practitioner to be trustee in bankruptcy or two or more named insolvency practitioners as joint trustees;

(b) a resolution to establish a creditors' committee;

(c) (unless it has been resolved to establish a creditors' committee) a resolution specifying the terms on which the trustee is to be remunerated, or to defer consideration of that matter;

(d) (if, and only if, two or more persons are appointed to act jointly as trustee) a resolution specifying whether acts are to be done by both or all of them, or by only one;

(e) (where the meeting has been requisitioned under section 294) a resolution authorising payment out of the estate, as an expense of the bankruptcy, of the cost of summoning and holding the meeting;

(f) a resolution to adjourn the meeting for not more than 3 weeks;

(g) any other resolution which the chairman thinks it right to allow for special reasons.

(2) No resolution shall be proposed which has for its object the appointment of the official receiver as trustee.

General power to call meetings

6.81.—(1) The official receiver or the trustee may at any time summon and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the bankruptcy.

In relation to any meeting of creditors, the person summoning it is referred to as "the convener".

(2) When a venue for the meeting has been fixed, notice of the meeting shall be given by the convener to every creditor who is known to him or is identified in the bankrupt's statement of affairs.

The notice shall be given at least 21 days before the date fixed for the meeting.

(3) The notice to creditors shall specify the purpose for which the meeting is summoned, and a time and date (not more than 4 days before the meeting) by which creditors must lodge proxies and those who have not already lodged proofs must do so, in order to be entitled to vote at the meeting.

(4) Additional notice of the meeting may be given by public advertisement if the convener thinks fit, and shall be so given if the court so orders.

The chairman at a meeting

6.82.—(1) Where the convener of a meeting is the official receiver, he, or a person nominated by him, shall be chairman.

A nomination under this paragraph shall be in writing, unless the nominee is another official receiver or a deputy official receiver.

(2) Where the convener is other than the official receiver, the chairman shall be he, or a person nominated by him in writing to act.

A person nominated under this paragraph must be either—

(a) one who is qualified to act as an insolvency practitioner in relation to the bankrupt, or

(b) an employee of the trustee or his firm who is experienced in insolvency matters.

Requisitioned meetings

6.83.—(1) A request by creditors to the official receiver for a meeting of creditors to be summoned shall be accompanied by—

(a) a list of the creditors concurring with the request and the amount of their respective claims in the bankruptcy,

(b) from each creditor concurring, written confirmation of his concurrence, and

(c) a statement of the purpose of the proposed meeting.

Sub-paragraphs (a) and (b) do not apply if the requisitioning creditor's debt is alone sufficient, without the concurrence of other creditors.

(2) The official receiver, if he considers the request to be properly made in accordance with the Act, shall—

(a) fix a venue for the meeting, to take place not more than 35 days from the receipt of the request, and

(b) give 21 days' notice of the meeting, and of the venue for it, to creditors.

(3) Where a request for a creditors' meeting is made to the trustee, this Rule applies to him as it does to the official receiver.

Attendance at meeting of bankrupt, etc

6.84.—(1) Whenever a meeting of creditors is summoned, the convener shall give at least 21 days' notice of the meeting to the bankrupt.

(2) If the meeting is adjourned, the chairman of the meeting shall (unless for any reason it appears to him to be unnecessary or impracticable) give notice of the fact to the bankrupt, if the latter was not himself present at the meeting.

(3) The convener may, if he thinks fit, give notice to the bankrupt that he is required to be present, or in attendance.

(4) In the case of any meeting, the bankrupt or any other person may, if he has given reasonable notice of his wish to be present, be admitted; but this is at the discretion of the chairman.

The chairman's decision is final as to what (if any) intervention may be made by the bankrupt, or by any other person admitted to the meeting under this paragraph.

(5) If the bankrupt is not present, and it is desired to put questions to him, the chairman may adjourn the meeting with a view to obtaining his attendance.

(6) Where the bankrupt is present at a creditors' meeting, only such questions may be put to him as the chairman may in his discretion allow.

Notice of meetings by advertisement only

6.85.—(1) In the case of any meeting to be held under the Act or the Rules, the court may order that notice of it be given by public advertisement, and not by individual notice to the persons concerned.

(2) In considering whether to act under this Rule, the court shall have regard to the cost of public advertisement, to the amount of the funds available in the estate, and to the extent of the interest of creditors or any particular class of them.

Venue of meetings

6.86.—(1) In fixing the venue for a meeting of creditors, the person summoning the meeting shall have regard to the convenience of the creditors.

(2) Meetings shall in all cases be summoned for commencement between the hours of 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

(3) With every notice summoning a creditors' meeting there shall be sent out forms of proxy.

Expenses of summoning meetings

6.87.—(1) Subject to paragraph (3) below, the expenses of summoning and holding a meeting of creditors at the instance of any person other, than the official receiver or the trustee shall be paid by that person, who shall deposit security for their payment with the trustee or, if no trustee has been appointed, with the official receiver.

(2) The sum to be deposited shall be such as the trustee or (as the case may be) the official receiver determines to be appropriate; and neither shall act without the deposit having been made.

(3) Where a meeting is so summoned, it may vote that the expenses of summoning and holding it shall be payable out of the estate, as an expense of the bankruptcy.

(4) To the extent that any deposit made under this Rule is not required for the payment of expenses of summoning and holding the meeting, it shall be repaid to the person who made it.

Resolutions

6.88.—(1) At a meeting of creditors, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of the resolution.

(2) In the case of a resolution for the appointment of a trustee—

(a) if on any vote there are two nominees for appointment, the person who obtains the most support is appointed;

(b) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that one is appointed; and

(c) in any other case the chairman shall continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time), until a clear majority is obtained for any one nominee.

(3) The chairman may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.

(4) Where a resolution is proposed which affects a person in respect of his remuneration or conduct as trustee, or as proposed or former trustee, the vote of that person, and of any partner or employee of his, shall not be reckoned in the majority required for passing the resolution.

This paragraph applies with respect to a vote given by a person either as creditor or as proxy for a creditor (but subject to Rule 8.6 in Part 8 of the Rules).

Chairman of meeting as proxy-holder

6.89. Where the chairman at a meeting holds a proxy for a creditor, which requires him to vote for a particular resolution, and no other person proposes that resolution—

(a) he shall himself propose it, unless he considers that there is good reason for not doing so, and

(b) if he does not propose it, he shall forthwith after the meeting notify his principal of the reason why not.

Suspension of meeting

6.90. Once only in the course of any meeting, the chairman may, in his discretion and without an adjournment, declare the meeting suspended for any period up to one hour.

Adjournment

6.91.—(1) The chairman at any meeting may, in his discretion, and shall if the meeting so resolves, adjourn it to such time and place as seems to him to be appropriate in the circumstances.

This is subject to Rule 6.129(3) in a case where the trustee or his nominee is chairman and a resolution has been proposed for the trustee's removal.

(2) If within a period of 30 minutes from the time appointed for the commencement of a meeting a quorum is not present, then by virtue of this Rule the meeting stands adjourned to such time and place as may be appointed by the chairman.

(3) An adjournment under this Rule shall not be for a period of more than 21 days; and Rule 6.86(1) and (2) applies with regard to the venue of the adjourned meeting.

(4) If there is no person present to act as chairman, some other person present (being entitled to vote) may make the appointment under paragraph (2), with the agreement of others present (being persons so entitled).

Failing agreement, the adjournment shall be to the same time and place in the next following week or, if that is not a business day, to the business day immediately following.

(5) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to midday on the business day immediately before the adjourned meeting.

Quorum

6.92.—(1) A creditors' meeting is not competent to act for any purpose, except—

(a) the election of a chairman,

(b) the admission by the chairman of creditors' proofs, for the purpose of their entitlement to vote, and

(c) the adjournment of the meeting,

unless there are present in person or by proxy at least 3 creditors, or all the creditors, if their number does not exceed 3, being in either case persons entitled to vote.

(2) One person present constitutes a quorum if—

(a) he is himself a creditor with entitlement to vote and he holds a number of proxies sufficient to ensure that, with his own vote, paragraph (1) of this Rule is complied with, or

(b) being the chairman or any other person, he holds that number of proxies.

Entitlement to vote

6.93.—(1) Subject as follows, at a meeting of creditors a person is entitled to vote as a creditor only if—

(a) there has been duly lodged, by the time and date stated in the notice of the meeting, a proof of the debt claimed to be due to him from the bankrupt, and the claim has been admitted under Rule 6.94 for the purpose of entitlement to vote, and

(b) there has been lodged, by that time and date, any proxy requisite for that entitlement.

(2) The court may, in exceptional circumstances, by order declare the creditors, or any class of them, entitled to vote at creditors' meetings, without being required to prove their debts.

Where a creditor is so entitled, the court may, on the application of the trustee, make such consequential orders as it thinks fit (as for example an order treating a creditor as having proved his debt for the purpose of permitting payment of dividend).

(3) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits his proof for that purpose.

(4) A secured creditor is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him.

(5) A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

(a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the bankrupt, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and

(b) to estimate the value of the security and (for the purpose of entitlement to vote, but not for dividend) to deduct it from his proof.

Admission and rejection of proof

6.94.—(1) At any creditors' meeting the chairman has power to admit or reject a creditor's proof for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the proof.

(2) The chairman's decision under this Rule, or in respect of any matter arising under Rule 6.93, is subject to appeal to the court by any creditor, or by the bankrupt.

(3) If the chairman is in doubt whether a proof should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the proof is sustained.

(4) If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just.

(5) Neither the official receiver nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an application to the court under this Rule; and the chairman (if other than the official receiver or a person so nominated) is not so liable unless the court makes an order to that effect.

Record of proceedings

6.95.—(1) The chairman at any creditors' meeting shall cause minutes of the proceedings at the meeting, signed by him, to be retained by him as part of the records of the bankruptcy.

(2) He shall also cause to be made up and kept a list of all the creditors who attended the meeting.

(3) The minutes of the meeting shall include a record of every resolution passed; and it is the chairman's duty to see to it that particulars of all such resolutions, certified by him, are filed in court not more than 21 days after the date of the meeting.